IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

SA.No. 655 of 1994()

AS.219/1992 of PRL.S.C.,THALASSERY
OS.277/1990 of MUNSIFF COURT, THALASSERY
.....

APPELLANTS: APPELLANTS/DEFENDANTS
---

1. C.K.RAFEEQUE,
S/O.HAMEED, NO OCCUPATION,
SHAHIDA, MANZIL,
ERANHOLI AMSOM, VADAKKUMBAD DESOM.

2. P.K.ABDUL RAHIMAN, S/O.KHADER
NO OCCUPATION, ERNANHOLI AMSOM
-DO- -DO-

3. P.P.SHUKKOOR, S/O.EBRAHIM,
-DO- -DO-

4. ARIPPAYIL NASSAR, S/O.ERAMU HAJEE

-DO- -DO-

BY ADV. SRI.K.V.SOHAN

RESPONDENTS: RESPONDENT/PLAINTIFF

V.U.ISMAYIL, S/O.ABOOBACKER,
TRADER, RESIDING AT THALASSERY AMSOM
KUNNOTH DESOM.

BY ADV. SRI.N.VISWANATHA IYER

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 7/ 9 /2007 THE COURT ON 07/09/2007 DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A.NO.655 of 1994

Dated, this the 7th day of September,2007

JUDGMENT

Defendants in O.S.No.277/1990 on the file of Munsiff court, Thalassery are appellants. Plaintiff is respondent. Respondent instituted the suit seeking a decree for injunction. Plaint schedule property is a shop building in R.S.No.18/1 of Thalassery village. It admittedly originally belonged to Kumbakaroth Koran. According to respondent, under Ext.A1 assignment deed, he purchased the property on 7.2.1973 and the upstair portion of building which consists of two rooms and a common verandah was rented out to Kunnoth Branch of Indian Union Muslim League on a monthly rent of Rs.50/-. According to respondent, monthly rent was paid upto August 1989 and thereafter Muslim League Committee surrendered possession of the building in

November, 1989 and there was a fire in the building whereunder portion of the roof including windows and doors were destroyed. Contending that respondents who are office bearers of Sunni Students Federation and Sunny Yuvagana Sangh have no right over the property and attempted to trespass into the property, a decree for injunction was sought for. Appellants in their written statement contended that building 2/63 in the upstair was taken on rent by the President and Secretary of S.Y.S on a rent of Rs.7/- in 1969 from Kumbakkoroth Koran and since then they are in possession of property and therefore respondent is not entitled to the decree in respect of that portion of the building.

2. Learned Munsiff on the evidence of PWs.1 to 4, Exts.A1 to A2(e) DWs.1 and 2 and Exts.B1 to B5 and Exts.C1 and C2 granted a decree in favour of respondent finding that appellants are not tenants as claimed and they have no right over

the building and the rooms are in the possession of respondents. Appellants challenged the decree and judgment before Sub court, Thalassery in A.S.219/1992. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Appeal was admitted formulating the following substantial questions of law.

1. When defendants are in settled possession of plaint schedule property, can a plaintiff file a suit for injunction, to dispossess them by unlawful methods.

2. When Commissioner submitted a report without notice to defendants and later again filed a report after inspection with notice to the parties, whether court is justified in accepting the first report.

4. Learned counsel appearing for appellants was heard.

5. Advocate Mr.K.V.Sohan, learned counsel

appearing for appellants vehemently argued that Ext.B3 scene mahazar prepared by Sub Inspector of Police, Dharamadam Police Sttion establish that appellants were in possession of property when Sub Inspector inspected the property and courts below should not have ignored that valuable evidence. Learned counsel argued that respondent did not establish possession and evidence of respondent establish their that S.Y.S was a tenant of one of the shop room in the upstair bearing door No.2/63 and therefore the decree granted in respect of the said building is unsustainable.

6. The fact that building originally belonged to Kumbakaroth Koran is admitted. Under Ext.A1 the property including the building was assigned by Kumbakaroth Koran in favour of respondent on 7.2.1973. What was contended by respondent was that the entire upstair building which consists of two rooms bearing door No.2/62 and 2/63 of Thalassery Municipality were taken on

rent by Indian Union Muslim League and tenant was in possession till it was surrendered in November, 1989. The case of appellants is that room No.2/62 was obtained by then office bearers of Sunni Yuvagana Sangha from the original owner Kumbakaroth Koran in 1969. Courts below on appreciating the evidence found that there is no evidence to substantiate the lease or possession of appellants. Appellants did not examine Koran to prove that there was a lease. Though Exts.B1 series of rent receipts were produced, without examination of the landlord, receipts cannot be relied on. Though learned counsel appearing for appellants argued that Ext.B3 mahazar prepared by police in Crime 112/1989 of Dharmadam police station establish possession of appellant, as rightly found by courts below without proving Ext.B3 by executing the another, recitals therein cannot be relied on. Appellants did not examine either the Sub Inspector, who prepared the mahazar or any of the attesting witnesses to the

scene mahazar. In such circumstance, courts below found that Ext.B3 cannot be relied on and appellants were not the tenants of the building as claimed by them.

7. On the evidence trial court and first appellate court found that respondent has been in possession of the plaint schedule property and appellants have no manner of right or possession over property and granted the decree. There is no evidence to prove that appellants were in possession of property much less in settled possession of property. Respondent is therefore entitled to the decree granted by the courts below. There is no merit in the appeal. It is dismissed. No cost.

M.Sasidharan Nambiar
Judge

Tpl/-